IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 4 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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V R CORPORATION

Versus

STATE OF GUJARAT

Appearance:

1. SALES TAX REFERENCE No. 4 of 1993

MR K. H. KAJI for Petitioner.

Mr. Sudhir Mehta, AGP for the respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The Gujarat Sales Tax Tribunal, Ahmedabad has referred the following two questions for the opinion of this Court under Section 69 of the Gujarat Sales Tax Act, 1969:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the article viz. "Electrocom Juicer" is a domestic electrical appliance and would be covered by Entry 92 in Schedule II Part-A to the Gujarat Sales Tax Act, 1969?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the said article would not be covered by Entry 16(1) of Schedule II Part-A to the said Act even though the article could be used for manufacturing of goods to an extent?

2. The original applicant had made an application for determination under Section 62 of the said Act for determining as to what tax was payable in respect of "Electrocom" Juicer which the applicant purchased from outside the State of Gujarat and sold within the State. According to the dealer, the said goods were covered by Entry 16 (1)(ii) Part-A of the said Act because Electrom Juicer was machinery used in the manufacture of goods, the goods being juice produced from the fruits.

3. The Deputy Commissioner of Salex-Tax by his order dated 27th May, 1984 finding that the principal and primary use of "Electrocom Juicer" was for domestic purpose held that it was amply covered by Entry 92 of Schedule II Part-A of the Act. It was held that even if the contention of the applicant that the product is a machinery is accepted, it will stand excluded from the scope of Entry 16(1) of Schedule II Part-A of the Act. Following the ratio of the decision of this Court in Ms. Viswa & Co. Vs. State of Gujarat, reported in [1966] 17 STC 581 (Gujarat), the Deputy Commissioner held that the principal and primary use of the product which was a domestic electrical appliance will not change even when the product is casually used for business purpose. The Deputy Commissioner accordingly determined that the "Electrocom Juicer" with accessories sold under the invoices in question was domestic electrical appliance covered by Entry 92 of Schedule II Part-A of the Act and

was liable to tax accordingly.

4. The matter was carried to the Tribunal in Appeal no.1 of 1985 by the applicant. The Tribunal noted that it was a common ground that Entry 41 Schedule II Part-A of the Act which related to the " electrical goods other than those specified in Entry 92 and not being machinery used in the manufacture of goods," did not apply to the facts of the present case and that the only question that remained for its consideration was whether it would fall under Entry 16(1) or Entry 92 of Schedule II. On going through the booklet containing specifications of the said article "Electrocom Juicer" which was a Juicer, Blender and Grinder, the Tribunal noted that the said product was intended to be used for household purposes and that it was a domestic electrical appliance, and therefore, covered by Entry 92 of Schedule II. The Tribunal held that it was not always necessary that such appliance must be used for household purposes and that if it is capable of being used for household purposes, then it was a domestic appliance. It, therefore, held that the article "Electrocom Juicer" together with accessories sold by the appellant was covered by Entry 92 Schedule II Part-A of the said Act and was liable to tax accordingly. The appeal was, therefore, dismissed.

5. The learned Counsel for the original applicant contended that juice was goods different from the fruits from which it was extracted and the article "Electrocom Juicer" of the applicant could be used for manufacturing juice, and therefore, it should be treated as "machinery used in the manufacture of goods under Entry 16(1) and not as a "domestic electrical appliance" under Entry 92 as has been held in the determination order made under Sec.62 by the Deputy Commissioner which has been confirmed by the Tribunal.

6. The learned Asstt. Government Pleader appearing for the Revenue on the other hand contended that said article "Electrocom Juicer" was clearly a domestic electrical appliance and it made no difference even if it could be put to any non-domestic use. In support of his contention, he relied upon the decision of this Court in Viswa (Supra) and the decision of the Supreme Court in NAT Steel Equipments Pvt.Ltd Vs. Collector of Central Excise, 1988 (1) SCC 605 in which the ratio laid down in the case of Viswa (Supra) was approved.

7. Entries no.16(1), 41 and 92 of Schedule II Part-A to the said Act which are relevant and were in force at the time when the dispute was determined under Section 62

of the Act are reproduced hereunder:

"16(1) Machinery used in the manufacture of goods excluding machinery specified in any other entry in this or any other Schedule.

41. Electrical goods (other than those specified in entry 92 in this Schedule) not being machinery used in the manufacture of goods and spare parts and accessories of such machinery.

92. Domestic electrical appliances including elecric fans and fluorescent tubes (including chockes, starters, fixtures and fittings and accessories and other parts appertaining to such appliances but excluding bulbs."

8. As noted hereinabove, it was a common ground before the Tribunal that Entry 41 was not applicable if the article fell under Entry 92. Entry 16(1) deals with machinery used in the manufacture of goods excludig machinery specified in any other entry while Entry 92 refers to domestic electrical appliances inclusive of the items specified therein. The literature of the applicant's product " Electrocom Juicer, Blender, Grinder" is at Annexure-5 of the paperbook. This product could be used in any of the three functional modes juicer, blender and grinder. From the variety of the recipes mentioned in the said booklet, it is clear that it is intended to be used as a domestic kitchen appliance which works on electricity. The Tribunal has considered the use to which this appliance can be put in sufficient detail and we find no valid reason to take a different view of the matter as regards its finding that the product in question is a domestic electrical appliance.

9. All domestic electrical appliances may not be capable of manufacturing any goods. For example, a refrigerator or a ceiling fan which are domestic electrical appliances are not meant for manufacturing any goods. Therefore, there would be no question of consideration as to whether such domestic electrical appliances which obviously would be covered by Entry 92 would also fall under any other entry. These appliances are used for accomplishing certain tasks. It may, however be that electrical appliances may be used for making goods like, in the present case, where juices may be extracted by use of Electrocom Juicer. However, even

where a domestic electrical appliance is capable of being used for preparing such goods that would not by itself make it a machinery used for the manufacture of goods falling under Entry 16(1). Such article will nonetheless squarely fall under Entry 92 " Domestic Electrical Appliances" which is a specific entry in comparison with Entry 16(1) which is of a general nature. Entry 92 does not make any distinction between domestic electrical appliances which may be used just for accomplishing some task, such as a refrigerator which cools the room or a washing machine which may wash the clothes and domestic electrical appliances like Electrocom Juicer, Blender Grinder which may be used for making juice or processing food articles in the kitchen. Merely because such article which is manufactured for being used as a household electrical appliance is put to use for any business purpose, it cannot be said that it ceases to be a domestic electrical appliance. Having regard to the capacity of the said article under consideration and the household purpose for which it can be used, it clearly falls within the category of domestic electrical appliances under Entry 92. Admittedly, the article in question is neither an industrial mixer nor an industrial grinder and it is pure and simple, a juicer, blender and grinder made for household use.

9.1 As held by the Supreme Court in NAT Steel Equipment Pvt.Ltd. (Supra), it is not necessary to be a domestic electrical appliance that it must be actually used in the house. It must be of a kind which is generally used for household purposes. The Supreme Court approved the decision of this Court in Viswa & Co. (Supra) in which it was held that the electrical appliance did not cease to be a domestic electrical appliance even when used in a place other than the household and that it is not necessary that an electrical appliance in order to satisfy the description of " Domestic Electrical Appliance", must be actually used for the home or the house. The decision in Viswa & Co. was again cited with approval by the Supreme Court in the case of D. Shivanna Vs. State of Karnatakka, 120 STC 258. What is necessary is that such article must be of a kind which is generally used for household purpose and if that test is applied in the present case, there is no doubt that the article in question, namely, "Electrocom Juicer, Blender and Grinder" is a domestic electrical appliance.

10. In the above view of the matter, we hold that the Tribunal was right in holding that the article "Electrocom Juicer" is a "Domestic Electrical Appliance "

covered by Entry 92 in Schedule II Part-A to the Gujarat Sales Tax Act, 1969 and that it would not be covered by Entry 16(1) in Schedule II Part-A to the said Act. Both the questions are, therefore, answered in the affirmative in favour of the Revenue and the Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani,J.)

(Kundan Singh, J.)

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